



**FINAL ADMINISTRATIVE DECISION  
ILLINOIS PROPERTY TAX APPEAL BOARD**

APPELLANT: Michael Zamis  
DOCKET NO.: 09-04891.001-R-1  
PARCEL NO.: 05-08-310-026

The parties of record before the Property Tax Appeal Board are Michael Zamis, the appellant, by attorney Gary L. Taylor, of Rathje & Woodward, LLC, Wheaton, Illinois; and the DuPage County Board of Review.

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds a reduction in the assessment of the property as established by the DuPage County Board of Review is warranted. The correct assessed valuation of the property is:

**LAND:** \$18,230  
**IMPR:** \$179,500  
**TOTAL:** \$197,730

Subject only to the State multiplier as applicable.

**ANALYSIS**

The subject property is improved with a two-story single family dwelling of brick and frame exterior construction that contains 2,966 square feet of living area and was built in 1991. Features of the home include central air conditioning, one fireplace, a two-car garage and a partial basement with partial finish. The subject has a 9,856 square foot site. The subject property is located in Wheaton, Milton Township, DuPage County.

The appellant appeared before the Property Tax Appeal Board by counsel contending overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal of the subject property prepared by Caroline Dorn, a State Certified Residential Real Estate Appraiser. The appraiser was not present at the hearing to provide testimony and be cross examined regarding the appraisal methodology and the final value conclusion. Using the sales comparison approach to value, the appraiser estimated the subject property had a market value of \$535,000 as of May 18, 2009.

Under the sales comparison approach the appraiser utilized four comparable sales, one sale listing and one pending sale located in Wheaton, approximately .4 of a mile to 2 miles from the

subject property. The comparables have lots that range in size from 9,976 to 23,072 square feet of land area. The comparables were described as being improved with two-story single family dwellings that ranged in size from 2,722 to 3,475 square feet of living area. The dwellings were of brick and frame construction that ranged from 17 to 42 years old. Each comparable had central air conditioning, one or two fireplaces and a two-car garage. Five comparables had finished basements and one comparable had an unfinished basement. Comparables 1 through 4 sold from October 2008 to April 2009 for prices ranging from \$535,000 to \$639,000 or from \$153.96 to \$197.32 per square foot of living area, land included. Comparable 5 listed for \$565,900 or \$166.00 per square foot of living area, land included. Comparable 6 was a pending sale for \$567,900 or \$207.72 per square foot of living area, land included. After making adjustments to the comparables for differences when compared to the subject property, the appraiser concluded the comparables had adjusted prices ranging from \$511,100 to \$599,700. Based on these adjusted sales, the appraiser estimated the subject had an estimated value of \$535,000 under the sales comparison approach to value.

At the hearing the board of review objected to the appraisal report contending the appraiser was not present to be cross-examined. The Board reserved ruling.

The appellant's attorney called no witnesses and acknowledged that the appraiser was not present at the hearing. The appellant's attorney asserted the argument was based on market value. The appellant's attorney agreed that the intended user of the appraisal was the lender/client and the intended use was for the lender/client to evaluate the property for a mortgage finance transaction. The appellant's attorney stated that he believed his client had permission to use the appraisal for challenging the assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling \$224,740 was disclosed. The subject's total assessment reflects a market value of \$675,707 or \$227.82 per square foot of living area including land when applying the 2009 three-year average median level of assessments for DuPage County of 33.26%. The board of review submitted an Addendum to Board of Review Notes on Appeal. In support of the subject's assessment, the board of review also submitted a grid analysis marked as Exhibit #1, which was prepared by the Milton Township Assessor's Office. The assessor detailed the appellant's comparables and provided five additional comparables. Also included were copies of the property record cards for all the comparables used by the parties and a map showing the location of both parties' comparables in relation to the subject property.

The board of review called as its witness Mary Cunningham, Deputy Assessor of Milton Township. Cunningham testified that the appraiser's comparables are not located in the subject's assessment neighborhood code as defined by the local assessor.

Cunningham also testified that only two of the board of review's comparables are located in the subject's neighborhood and the other three are less than one mile away from the subject. The comparables consist of two-story single family dwellings of frame or frame and brick construction that were constructed from 1978 to 1996. All of the comparables have central air and full or partial basements, with three being partially finished. The comparables have one or two fireplaces. All the comparables have garages ranging from 484 to 840 square feet of building area. The dwellings range in size from 2,436 to 3,675 square feet of living area and are situated on lots that contain from 12,920 to 48,700 square feet of land area. The comparables sold from October 2006 to September 2008 for prices ranging from \$520,000 to \$770,000 or from \$202.45 to \$235.17 per square foot of living area, including land. Based on this evidence, the board of review requested confirmation of the subject's assessment.

Under questioning by the appellant's attorney, Cunningham testified that she agreed that the sales closer to January 1, 2009 are more indicative of market value. Cunningham testified that all of the sales the appellant used are closer in date to January 1, 2009 than the sales used by the assessor with the exception of sale number 1. Cunningham also testified that if there were any comparable sales after the January 1, 2009 assessment date in the subject's neighborhood, the assessor's office would have used the sales in their analysis.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds the evidence in the record supports a reduction in the subject's assessment.

The appellant contends overvaluation as the basis of the appeal. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The Board finds the appellant did meet this burden of proof and a reduction in the subject's assessment is warranted.

In support of the overvaluation argument the appellants submitted an appraisal estimating the subject had a market value of \$535,000 as of May 18, 2009. The board of review objected to the appraisal report contending the appraiser was not present to be cross-examined. The Board hereby sustains the objection. The Board finds the appellant's appraiser was not present at the hearing to provided direct testimony or be cross-examined regarding the appraisal methodology and final value conclusion. In Novicki v. Department of Finance, 373 Ill.342, 26 N.E.2d 130 (1940), the Supreme Court of Illinois stated, "[t]he rule against

hearsay evidence, that a witness may testify only as to facts within his personal knowledge and not as to what someone else told him, is founded on the necessity of an opportunity for cross-examination, and is basic and not a technical rule of evidence." Novicki, 373 Ill. at 344. In Oak Lawn Trust & Savings Bank v. City of Palos Heights, 115 Ill.App.3d 887, 450 N.E.2d 788, 71 Ill.Dec. 100 (1<sup>st</sup> Dist. 1983) the appellate court held that the admission of an appraisal into evidence prepared by an appraiser not present at the hearing was in error. The court found the appraisal was not competent evidence stating: "it was an unsworn ex parte statement of opinion of a witness not produced for cross-examination." This opinion stands for the proposition that an unsworn appraisal is not competent evidence where the preparer is not present to provide testimony and be cross-examined. The Board gives the conclusion of value contained in the appraisal little weight. The appraiser was not present at the hearing to be cross-examined with respect to the appraisal methodology, the selection of the comparables, the adjustment process and the ultimate conclusion of value. However, the Board may examine the raw sales data contained in this record, including the sales in the appellant's appraisal.

The Board finds the record contains 11 comparables submitted by the parties in support of their respective positions. The Board gave less weight to the appellant's comparables 2, 3, 4 and 6 due to their distant location from 1.5 to 2.0 miles from the subject. Additionally, comparable 4 is older in age than the subject. The Board also gave less weight to comparables 2, 3, 4 and 5 submitted by the board of review. These sales occurred in 2006 and 2007, which are less indicative of fair market value as of the subject's January 1, 2009 assessment date. The Board finds the remaining three comparables; two sales and one listing are more similar to the subject in location, design, size, age and features. Due to these similarities the Board gave these three comparables more weight. These most similar properties sold or were listed, which sets the upper limit of value, from June 2008 to April 2009 for prices ranging from \$565,900 to \$639,900 or from \$166.00 to \$202.45 per square foot of living area including land. The subject's assessment reflects a market value of \$675,707 or \$227.82 per square foot of living area including land, which falls above the range established by the most similar comparables in this record. After considering adjustments to the comparables for differences when compared to the subject, the Board finds the subject's assessment is excessive and a reduction is warranted.

This is a final administrative decision of the Property Tax Appeal Board which is subject to review in the Circuit Court or Appellate Court under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and section 16-195 of the Property Tax Code.

*Donald R. Cuit*

Chairman

*K. L. Fern*

Member

*Frank A. Huff*

Member

*Mario Morris*

Member

*J. R.*

Member

DISSENTING: \_\_\_\_\_

C E R T I F I C A T I O N

As Clerk of the Illinois Property Tax Appeal Board and the keeper of the Records thereof, I do hereby certify that the foregoing is a true, full and complete Final Administrative Decision of the Illinois Property Tax Appeal Board issued this date in the above entitled appeal, now of record in this said office.

Date: October 19, 2012

*Allen Castrovillari*

Clerk of the Property Tax Appeal Board

**IMPORTANT NOTICE**

Section 16-185 of the Property Tax Code provides in part:

"If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel after the deadline for filing

complaints with the Board of Review or after adjournment of the session of the Board of Review at which assessments for the subsequent year are being considered, the taxpayer may, within 30 days after the date of written notice of the Property Tax Appeal Board's decision, appeal the assessment for the subsequent year directly to the Property Tax Appeal Board."

In order to comply with the above provision, YOU MUST FILE A PETITION AND EVIDENCE WITH THE PROPERTY TAX APPEAL BOARD WITHIN 30 DAYS OF THE DATE OF THE ENCLOSED DECISION IN ORDER TO APPEAL THE ASSESSMENT OF THE PROPERTY FOR THE SUBSEQUENT YEAR.

Based upon the issuance of a lowered assessment by the Property Tax Appeal Board, the refund of paid property taxes is the responsibility of your County Treasurer. Please contact that office with any questions you may have regarding the refund of paid property taxes.